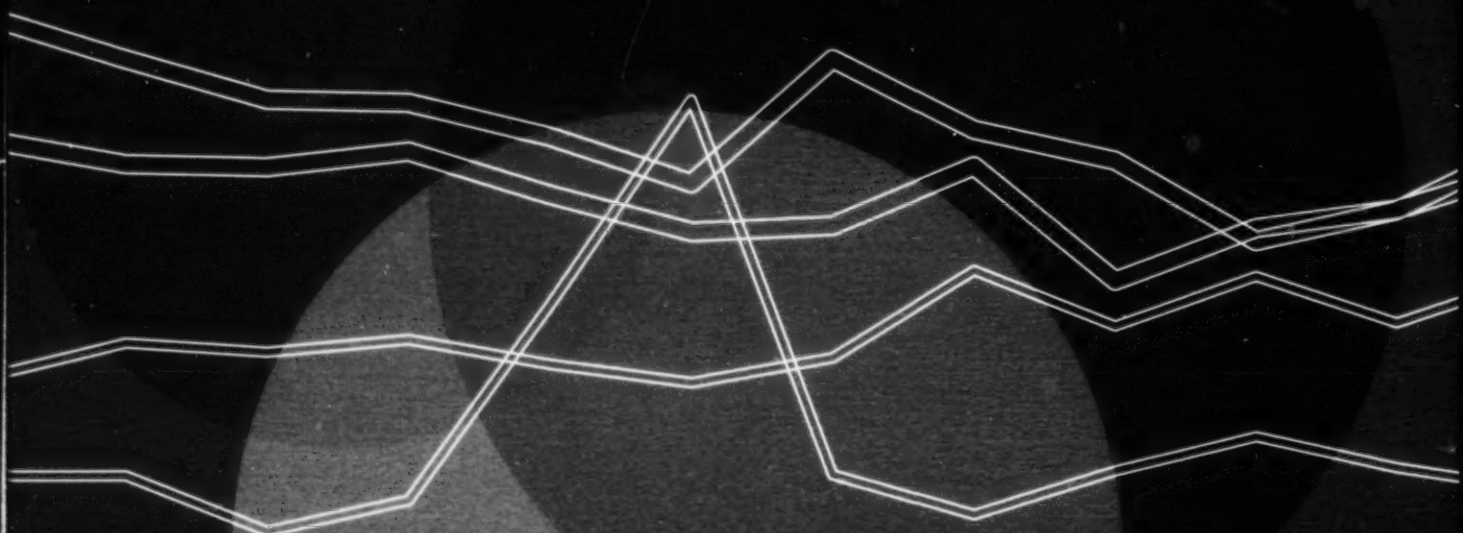
Workers' Compensation Appeals Tribunal

Annual Report
for the year ending March 31, 2008



NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

Workers' Compensation Appeals Tribunal

Annual Report
for the year ending March 31, 2008

NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

NOVA SCOTIA
Workers' Compensation Appeals Tribunal

5670 Spring Garden Road
Suite 1002
PO Box 691
Halifax, Nova Scotia
B3J 1H6

902 424 2210 t
TOLL FREE IN NS
1 800 274 8281
902 424 3321 f
www.gov.ns.ca/lwc/wcat/

To Her Honour
The Honourable Mayann E. Francis, O.N.S.
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the fiscal year ending March 31, 2008.

Respectfully submitted,

Cecil P. Clarke
Minister Responsible for Part II of the *Workers' Compensation Act*

NOVA SCOTIA
Workers' Compensation Appeals Tribunal

5670 Spring Garden Road
Suite 1002
PO Box 893
Halifax, Nova Scotia
B3J 1H6

902 424 2250 t
TOLL FREE IN NS
1 800 274 8281
902 424 2321 f
www.gov.ns.ca/lwc/wcat

Cecil P. Clarke
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2008.

Respectfully submitted,

Louanne Labelle

Louanne Labelle
Chief Appeal Commissioner

Tribunal Personnel 2007-08

Mary Jewers
Office manager

Charlene Downey
Secretary-receptionist

vacant
Clerk II

Diane Smith
Scheduling coordinator

Samantha MacGillivray
Clerk II

Colleen Bennett
Executive assistant to the
Chief Appeal Commissioner

Appeal Commissioners

Louanne Labelle
Chief Appeal Commissioner

Leanne Rodwell Hayes
Alison Hickey
Glen J. Johnson
Gary H. Levine
Andrea Smillie

Andrew MacNeil
Michelle R. Margolian
David Pearson
Alexander MacIntosh

Contents

Executive Summary 1

Introduction 7
Tribunal Mandate and Performance Measures 7
Operations Overview 8

Tribunal-Appellant Interaction 11
Self-Represented Participants 11
Appeal Management 11

Freedom of Information and Protection of Privacy 15

Decisions for the year 2007–08 18
Noteworthy Decisions (by issue) 19

Appeals from Tribunal Decisions 31
Decisions of the Court of Appeal 32

Inter-agency Cooperation 35

Financial Report 37

The year ahead 38

Appendix 39

Executive Summary

The Workers' Compensation Appeals Tribunal (the tribunal) hears appeals from final decisions of hearing officers of the Workers' Compensation Board (the board) and determines whether the act bars a right of action against employers. The tribunal is legally and administratively separate from the board and ensures an independent and impartial review of board decisions.

The tribunal also works with several partner agencies within the framework known as the Workplace Safety and Insurance System (WSIS). Partner agencies are the board, the Workers' Advisers Program (WAP), and the Occupational Health and Safety division of the Department of Labour and Workforce Development.

The tribunal also looks forward to cooperating in the coming years with the newly appointed employer and worker stakeholder counselors in their efforts to help stakeholders navigate the system.

This annual report will highlight the processing and adjudication of appeals as well as the tribunal's participation in joint initiatives with system partners.

The year in review

Entitlement to chronic pain benefits continued to be the primary issue on appeal at the tribunal during the year 2007–08. Appeal volumes remained high, the tribunal having received 976 appeals during the year. The tribunal issued a correspondingly higher number of decisions, rendering 892 decisions during the year.

The efficient and timely processing of appeals remained a priority for the tribunal throughout 2007–08. At year-end, 481 appeals remained outstanding as compared to 483 at the end of 2007. Timeliness continued to meet performance expectations, as 70 per cent of decisions were released within six months of the date the appeal was received, compared to 81 per cent in 2006–07.

A continued high number of chronic pain appeals affected every aspect of the tribunal's operations. Many workers who appear before the tribunal appealing chronic pain decisions were unrepresented or had representatives who were not members of the WAP (overall WAP represented 48 per cent of workers and 52 per cent of workers were either self-represented or represented by injured worker groups).

The tribunal hears most appeals by way of oral hearing. Sixty-six per cent of appeals were heard by way of oral hearing.

Appeal outcomes have remained constant. The overall overturn rate by the tribunal increased slightly to 39 per cent. This number is affected by the high number of denials in chronic pain appeals.

The tribunal anticipates a continued high number of appeals through the end of 2008 due to the completion by the board's transition services team of decisions dealing with entitlement to chronic pain benefits under the Chronic Pain Regulations.

The adjudicative highlight of 2007–08 was the tribunal's resolving of four appeals dealing with entitlement to chronic pain benefits for workers who had chronic pain that developed before April 17, 1985.

A panel of three appeal commissioners hearing one of the appeals stated this case to the Court of Appeal by an Originating Notice (Application Inter Partes) filed pursuant to s. 206 of the act (Cohen v. Nova Scotia (Workers' Compensation Board) (2008), 260 N.S.R. (2d) 144). Under s. 206, the tribunal may state a case to the court on a question of law. The stated case was filed with the Court of Appeal on May 14, 2007.

The tribunal referred two questions to the court. The two questions were (1) Is s. 12 of board policy 3.3.5 consistent with s. 4 of the Chronic Pain Regulations? and (2) Is the worker barred from an assessment for benefits and services under the Chronic Pain Regulations due to the fact that he developed chronic pain before April 17, 1985?

The court answered these two questions in the negative. In other words, the Court of Appeal found that workers who developed chronic pain before April 17, 1985 were entitled to be assessed for benefits for chronic pain despite the language of the board policy.

In this stated case, the regulation spoke of workers who "had" chronic pain as of April 17, 1985; the policy spoke of workers who "developed" chronic pain "on or after" April 17, 1985.

The board had denied entitlement to benefits to the worker because, in their opinion, he had developed chronic pain before April 17, 1985.

The tribunal proceeded to adjudicate the worker's appeal as well as the three other appeals in light of the court's decision.

Following the tribunal's decision, the existing claims by workers injured before 1985 who had chronic pain on that date were adjudicated by the board's transition services team, who anticipate completing the adjudication by June 2008.

Yet to be determined by the Court of Appeal is a constitutional challenge to the 3 per cent and 6 per cent benefit scheme of the Chronic Pain Regulations.

Again, I would like to recognize this year the contributions of all tribunal staff to the efficient and fair resolution of appeals during the year. Their dedication and commitment ensured that the tribunal maintained not only its efficient operations, but also the standard of quality and consistency expected by all participants.

Interagency cooperation

As Chief Appeal Commissioner, I sit on the Heads of Agencies Committee, which oversees implementation of the WSIS strategic plan. I also meet regularly with the Chief Worker Adviser, the Manager of Internal Appeals, the Manager of the board's Client Services department and board legal counsel to discuss issues arising from the adjudication of claims and appeals. This group forms the Issues Resolution Working Group whose mandate is to develop and implement issue resolution initiatives to support improved communication, information sharing, and overall efficiency of the workers' compensation system. Recommendations for change are provided to the Heads of Agencies Committee, emphasizing a collaborative and integrated approach to appeal management and improved case management.

The Issues Resolution Working Group has, for the past several years, worked to identify opportunities for process improvement and to resolve specific issues brought forward by one of the three agencies. Activity resulting from this working group includes the establishment of joint training and joint appeals scheduling, and the establishment of an appeal issues discussion group. Moving forward, system partners will explore opportunities to make this system less adversarial.

During 2007–08, the Issues Resolution Working Group met regularly to explore opportunities for improving decision making at all levels. All the system partners are committed to improving the system and responding to stakeholders' concerns. These concerns were heard in the yearly stakeholder round table on November 28, 2007, at which time the agencies also reported on the system partner efforts to address stakeholder concerns. One of the main issues centres around efforts to make the system less adversarial. Partners continue to explore ways to resolve claims earlier and less formally.

The tribunal will focus its efforts in the coming year on this issue, exploring the use of resolution conferences and planning a forum amongst agencies and stakeholders on how to make the system less adversarial. This is in line with the WSIS strategic goal of improving service delivery in the field of issue resolution.

In the year ahead, the system partners have agreed that the Heads of Agencies Committee will keep stakeholders apprised of the efforts of the Issues Resolution Working Group. The group will specifically address the performance measure represented by the percentage of decisions overturned on appeal, in an effort to monitor the improvements in the quality of decision making within the system.

Interaction with stakeholders

The tribunal is represented on the Systems Performance Advisory Committee mandated to implement system performance measures as recommended by a committee of stakeholders.

As Chief Appeal Commissioner, I take the opportunity to speak with injured worker groups and employer representatives to obtain feedback on tribunal processes. These meetings contribute to a better understanding of the system.

On a yearly basis, I meet with the board's Board of Directors to bring them up to date on operations at the tribunal. I also attend stakeholder consultation sessions hosted by the coordinating committee (the Deputy Minister of Labour and Workforce Development and the Chair of the board) where employer and worker representatives discuss future directions for the system.

On April 5, 2007, the Department of Environment and Labour hosted a meeting to which I was invited with injured worker group representatives to discuss the mandate and funding of such groups.

On May 15, 2007, the Deputy Minister of Labour and Environment and the Acting Chair of the board's Board of Directors hosted the third annual meeting of stakeholders. This was an opportunity for partner agencies to report on our joint activities and strategic plan.

In May and June 2007, the board held four workshops for employers across the province. Together with colleagues from the Internal Appeals Department and the WAP, I organized a briefing on the WSIS appeals system.

On November 13, 2007, the Heads of Agencies also met with the System Performance Advisory Committee in preparation for the semi-annual stakeholder meeting, which took place on November 28, 2007.

On March 11, 2008, the Heads of Agencies Committee met with the System Performance Advisory Committee to discuss how to move forward on goals and measures for the system and to discuss plans for the system annual meeting scheduled for May 13, 2008.

The tribunal's 2007 strategic plan focused on violence prevention in the workplace. The tribunal, with the cooperation of the Department of Justice, Occupational Health and Safety division, prepared a violence prevention plan. The manager of OH&S performed a risk assessment of our offices and building and, as a result, changes were made to our premises.

Financial operations

In 2007–08, the tribunal's total expenditures were within 77 per cent of the original authority and within 96.26 per cent of our revised forecast. Net expenditures totalled $1,464,516.00, a reduction from the previous year.

Key initiatives for the coming year

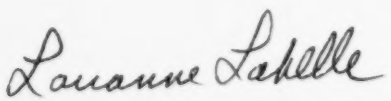
The tribunal expects that the continued processing of chronic pain appeals will dominate the coming year's operations.

The tribunal, however, looks forward to encouraging change in the way that appeals are resolved.

Stakeholders have identified priorities for system partners, including making the system less adversarial and improving effectiveness.

The tribunal will work with our partners and stakeholders to improve communication within the appeals system and to encourage a more collaborative approach to the resolution of appeals.

Key initiatives for 2008–09 will be to improve our appeal management processes to attain a higher level of efficiency, to improve communication with participants, and to take positive and specific measures to improve the resolution of appeals.



Louanne Labelle
Chief Appeal Commissioner

Introduction

The tribunal works with several partner agencies within a framework known as the Workplace Safety and Insurance System [WSIS]. Our partner agencies are the board, the WAP, and the Occupational Health and Safety Division [OHS] of the Department of Labour and Workforce Development.

The tribunal's annual report for the year 2007–08 will highlight three areas: tribunal-appellant interaction; the adjudication of appeals in noteworthy cases; and tribunal participation in joint initiatives with system partners. The annual report also includes a section addressing appeals from tribunal decisions heard or considered by the Nova Scotia Court of Appeal.

Tribunal Mandate and Performance Measures

The tribunal hears appeals from final decisions of hearing officers of the board. Although governed by the same enabling statute as the board, the tribunal is legally and administratively separate from it, and is not ordinarily bound by board decisions or opinions. This ensures a truly independent review of contested outcomes.

In the processing and adjudication of appeals, the tribunal strives to strike a balance between procedural efficiency and fairness. Its work is directed by principles of administrative law, by statute, and by decisions of superior courts.

Its performance is shaped by, and measured against, several parameters drawn from the Worker's Compensation Act (the "act," as amended) and by its own survey of user groups (dominantly, injured workers) generally performed biennially.

Appeal commissioners strive to release decisions within 30 days of an oral hearing or the closing of deadlines for written submissions, as opposed to the legislated 60 days.

New appeals are processed within 15 days of receipt by the tribunal. About 15 per cent take a greater time to process, for various reasons.

Essentially, the tribunal can hear an appeal within 45 days of receiving notice that the participants are ready to proceed.

Operations Overview

Overall, the number of appeals received by the tribunal, and the number of decisions rendered, have remained high, compared to the levels of the preceding year (see Figures 1 and 2). In the past fiscal year, 892 decisions were issued, up from 815 issued in 2006–07. This increase is largely accounted for by the continuing high level of chronic pain appeals. Concurrently, there were 481 appeals awaiting adjudication by the tribunal at the end of 2007–08, down from 483 awaiting adjudication at the end of 2006–07 (see Figure 3). In 2007–08, the tribunal received 976 appeals, a slight decrease from the 1089 received in the previous year.

Assuming that the outcome of appeals at the Internal Appeals level of the board remains constant, the tribunal can anticipate a continuation in the current high level of appeals, at least through December 2008.

Please see Appendix containing specific data for the following figures.

Figure 1
Appeals Received

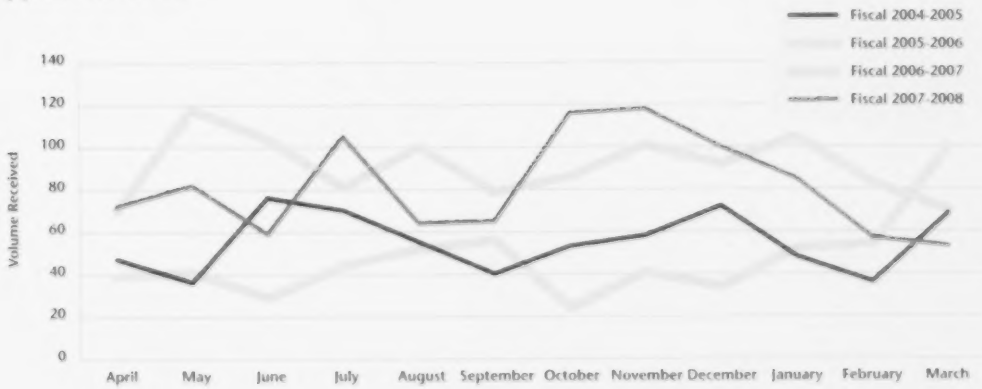


Figure 2
Decisions Rendered

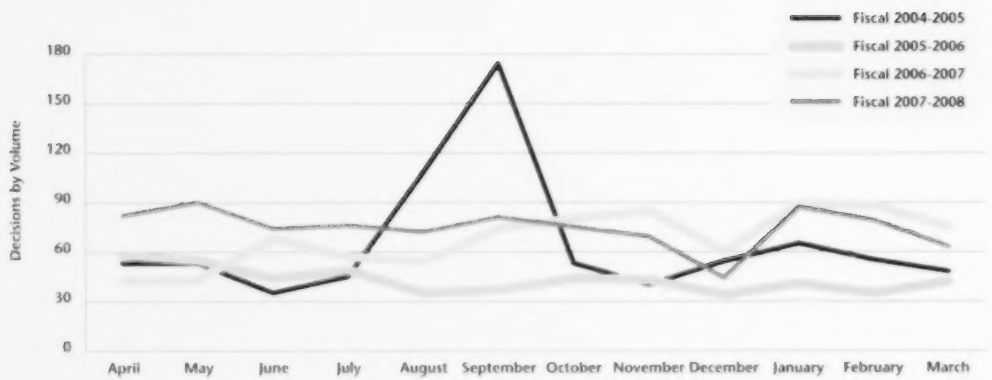
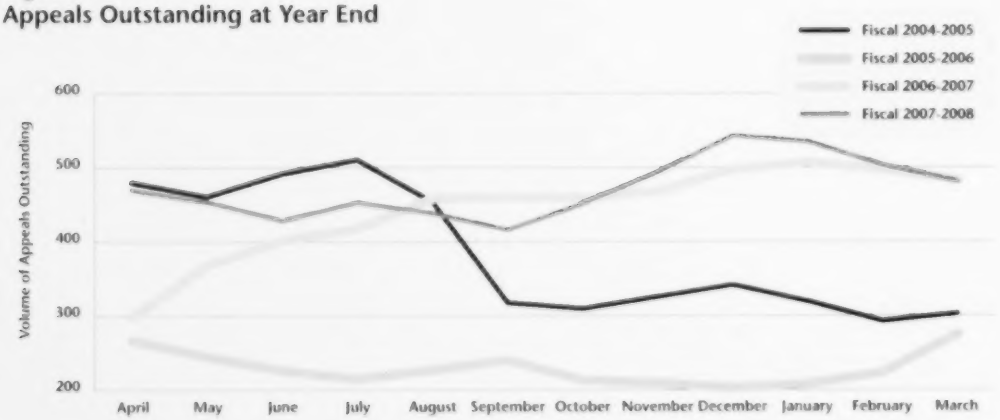


Figure 3
Appeals Outstanding at Year End



Of the 892 decisions issued, 875 dealt with appeals by injured workers (see Figure 4). Another 13 appeals were filed by employers as a result of board decisions in workers' claims. Two decisions were issued in appeals by employers from board assessment decisions. Two decisions were issued as a result of applications made under s. 29 of the act. The overall overturn rate by the tribunal increased marginally from 37 per cent to 39 per cent, due to the continuing high number of denials in chronic pain appeals (see Figure 5).

Of the 875 appeals brought by injured workers, employers participated in 27 per cent, generally consistent with participation in the previous year. Employer participation varied from the filing of written submissions to the less frequent attendance at, and participation in, oral hearings.

Figure 4
Decisions by Appellant Type

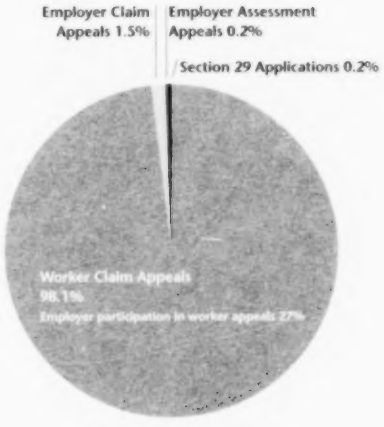
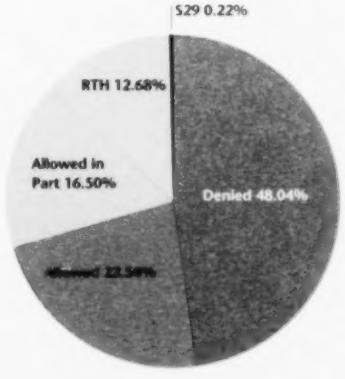

Employer Claim Appeals 1.5%
Employer Assessment Appeals 0.2%
Section 29 Applications 0.2%
Worker Claim Appeals 98.1%
Employer participation in worker appeals 27%

Figure 5
Decisions by Outcome



Tribunal-Appellant Interaction

The tribunal exists to adjudicate appeals by workers and employers from final decisions of the board, and to consider applications concerning the "right to sue" under s. 29 of the act. In an attempt to improve service to participants in those appeals and applications, the tribunal regularly evaluates its interactions with participants.

Self-Represented Participants

Self-represented workers are now contacted by a senior staff person, rather than an appeal commissioner. The checklist of what to expect at the hearing is still reviewed, and any questions are answered or are referred to an appeal commissioner. Hearings are usually scheduled as part of this phone call.

The tribunal has expanded its role in contacting self-represented participants to include self-represented employers. Self-represented employers are contacted by telephone shortly after they advise the tribunal that they are participating. The appeal commissioner who contacts the employer will not hear the appeal. The appeal commissioner will review the tribunal's procedures, explain what to expect before, during, and after the hearing, and answer any questions the employer may have.

Self-represented employers have expressed concerns when there has been a hearing where the worker has a legally trained representative. The tribunal's focus in the coming year will be to attempt to ensure that all appeal participants are able to present their case without feeling overwhelmed. The challenge will be retaining the tribunal's neutrality in adjudicating appeals.

Appeal Management

The tribunal regularly reviews its appeal management processes to ensure that adequate information and effective communication is provided to all appeal participants. The tribunal's appeal processes are adaptable, depending upon the nature of the representation involved in the appeal.

Appeal participants represented by legal counsel, such as those of the WAP, are provided with standard deadlines in appeals proceeding by written submission. Appeals proceeding by oral hearing that involve only workers with WAP representatives are scheduled at the tribunal's monthly docket days. This enables advisers to communicate with the tribunal's registrar directly to address a variety of appeal issues at one time.

Appeals proceeding by oral hearing that involve the WAP and employers represented by legal counsel are scheduled by conference call with the registrar. Various matters such as witnesses, expert reports, and certain preliminary issues may also be addressed, in addition to the actual setting of a hearing date and establishing the appropriate hearing duration. Hearings where employers are representing themselves may also be set down in this manner. The tribunal contacts self-represented employers to discuss appeal procedures in advance of the conference call.

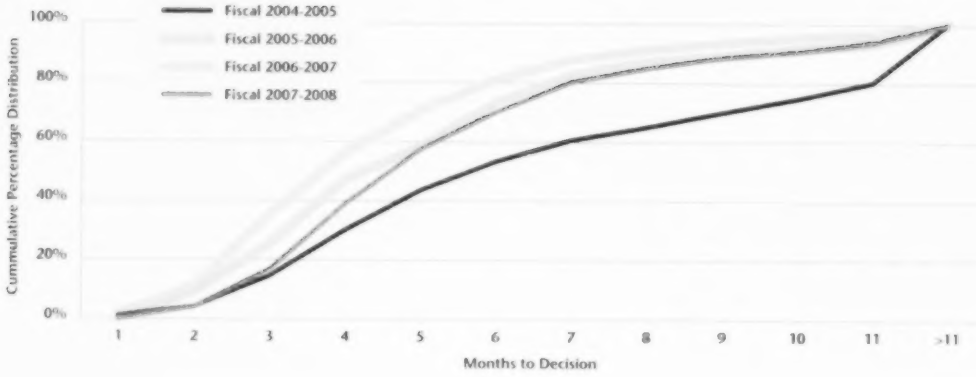
Figure 6
Decisions by Representation

The tribunal continues to contact self-represented participants by telephone to explain what to expect at a hearing and to set the hearing date. The checklist reviewed during this call is enclosed with the letter confirming the hearing date, time, and location. The percentage of appeals where participants act without a representative is shown in Figure 6.

In all situations, every effort is made to respond to the questions of the participants. The tribunal endeavours to strike the necessary balance between providing assistance and information without compromising the tribunal's independence, objectivity, and neutrality. To reduce the potential for conflict once an appeal commissioner becomes involved, the tribunal has increasingly turned to its staff to initiate contact with appeal participants and provide the necessary information. Generally, if an appeal commissioner has contact with a participant, he or she will not be assigned to hear the appeal. However, in particularly challenging appeals, the presiding appeal commissioner will assume responsibility for the appeal early on, so that preliminary issues can be dealt with and there is continuity through to the final decision.

All appeal participants are provided with written confirmation and information at each stage of the appeal.

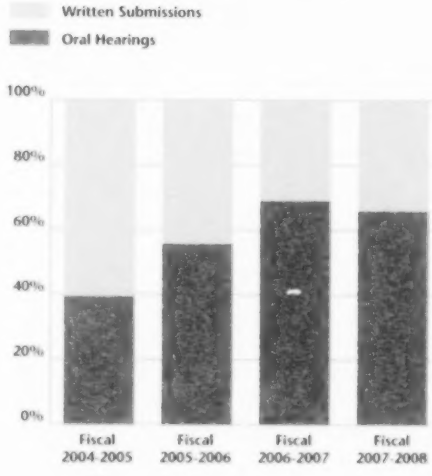
Figure 7
Timeliness to Decision



Timeliness (to decision release), clarity of letters and decisions, and management of participant expectations continue to be focus areas for tribunal improvement. Overall, 70 per cent of appeals were resolved within 6 months as compared to 81 per cent in 2006–07 (see Figure 7).

Within two weeks of filing a notice of appeal, appellants receive confirmation not only that their appeal has been received, but that the notice of appeal has been reviewed and that a mode of appeal – whether by written submission or oral hearing – has been determined, subject to any objections of the participants. The proportion of appeals decided by oral hearing has decreased slightly from last year, while the number of self-represented appellants has remained constant (see Figure 8).

Figure 8
Decisions by Mode of Hearing



Generally, by the third week following receipt of a notice of appeal, the tribunal has determined if any other statutory participant (which includes the injured worker, the employer, and the board) will participate and has sent confirmation to the appellant.

Employer participation in workers' appeals has increased slightly over the last fiscal year to 27 per cent of all appeals, from 25 per cent of appeals.

Requests for postponements, adjournments, and extensions of submission deadlines in written appeals fluctuated during the year. Such requests are often more frequent in winter due to weather conditions, but there are many other factors, including availability of late-retained counsel, worker or representative illness, availability of evidence, availability of expert witnesses or their reports, that result in delays and continue to pose scheduling and workload challenges.

The number of extension requests in both written submission and oral hearing appeals has remained static. These requests often pose last-minute problems for appeal commissioners' travel arrangements and workload, and frequently result in file re-assignments. In an effort to reduce these complications, this year the tribunal has become more rigorous in applying the 180-day procedural limit to the length of time an appeal may be outstanding. This is more difficult in complex appeals.

The tribunal evaluates the suitability of its hearing locations on an ongoing basis. Factors considered include the travelling distance required by all participants, cost of the room rental, accessibility for those with physical challenges, and the safety and security of all involved.

From time to time, tribunal members prepare papers explaining particular aspects of appeal procedures, legal issues, or related matters. These papers are posted on our website.

Freedom of Information and Protection of Privacy

Tribunal decisions contain personal and business information, particularly medical information. Hearings are held in camera. The decisions are provided to appeal participants including the worker, the board, and the employer. The decisions are available to the public through a subscription service provided by the Department of Labour and Workforce Development as part of its database publication.

The tribunal is governed by Part II of the act. The legislation does not specifically permit the publication of decisions. However, the tribunal has adopted a practice manual, available online, that sets out the tribunal's procedures and rules for the making and hearing of appeals as authorized under s. 240 of the act.

The tribunal's practice manual advises of the publication of tribunal decisions and provides as follows:

9.00 PUBLICATION OF TRIBUNAL DECISIONS

9.10 General

Tribunal decisions include a cover page setting out the names of participants and representatives. This information is not found in the body of the decision. The tribunal endeavours to exclude any information from the body of a decision which could identify the participants. Decisions, without identifying features, are available through the Nova Scotia Department of Environment and Labour website. The database is developed and maintained by the Nova Scotia Environment and Labour Library. Anyone wishing to use the database should contact the Environment and Labour Library at 424-8474.

9.20 **Personal Identifiers in Decisions**

Generally, decisions are written without personal identifiers for participants, except on the cover page. The names of participants, lay witnesses, and others (where the use of names would tend to identify the participants), are not used in tribunal decisions. Witnesses may be identified by their role, for example, the "worker" or the "employer," or by initials.

Expert witnesses may be referred to by name. However, if an appeal commissioner considers that the use of an expert's name might identify the participant, the expert witness may be referred to by title, for example, the worker's attending physician, or by initials.

The names of representatives will generally not be used in the body of a decision. Instead, they may be referred to by their role, such as the worker's representative. Board claim file numbers or employer registration numbers are not included in the body of a decision.

Quotations contained within tribunal decisions are edited to protect privacy. This is normally accomplished by substituting a descriptive term for a name and using square brackets to show the change, e.g., [the Worker].

A footnote at the bottom of the first page of every decision indicates that the participants have not been referred to by name in the body of the decision as the decision may be published. The publication version of decisions on the Department of Labour and Workforce Development database does not include any of the names of the participants nor claim numbers (which appear on the cover page of a decision).

Further vetting occurs after the decision has been released and prior to publication, if circumstances warrant. Requests have also been made to withhold decisions from publication due to the extremely sensitive material contained in some of the decisions. These requests are considered, and decisions may be withheld from publication.

The tribunal has adopted a "decision quality guide" that outlines quality standards for decision making. It includes a section concerning privacy issues, which states that "decisions should be written in a manner that minimizes the release of personal information." However, at the end of the day, a decision maker must have the discretion to include in a decision reference to evidence that the decision maker finds relevant to support the findings outlined in the decision.

Worker claim files are released to employers, after vetting by the tribunal for relevance. The tribunal has revised its file release policy to ensure compliance with FOIPOP without compromising the needs of participants to know the evidence on appeal. Of particular concern to the tribunal is the need to ensure that personal worker information is not used for an improper purpose or improperly released/ made public by a third party. The tribunal's correspondence accompanying file copies has also been revised to reflect these requirements and to refer to appropriate sanctions.

The tribunal rarely receives FOIPOP applications. Applications regarding claim files are referred to the board as they remain the property of, and are held by, the board, unless there is an active appeal. If there is an active appeal, no FOIPOP application need be made by an appeal participant, as the act provides for distribution of relevant claim files to appeal participants.

Most FOIPOP applications for generic information particular to the tribunal is addressed through the tribunal's Routine Access Policy, which is posted on the tribunal's website.

Decisions for the year 2007–08

The tribunal's business is to adjudicate appeals from decisions of the board, and to consider applications brought under s. 29 of the act to determine whether a party has a right to sue in the civil courts.

Adjudication is the tribunal's principal activity and any decision may illuminate or advance the tribunal's approach to an issue, even those in already well-developed areas of adjudication. For the interest of advocates and stakeholders, a detailed discussion of noteworthy decisions, selected from the 892 decisions issued in the year 2007–08, is provided below (see Figures 9 and 10).

Figure 9
Decisions by Issue Categories – Worker

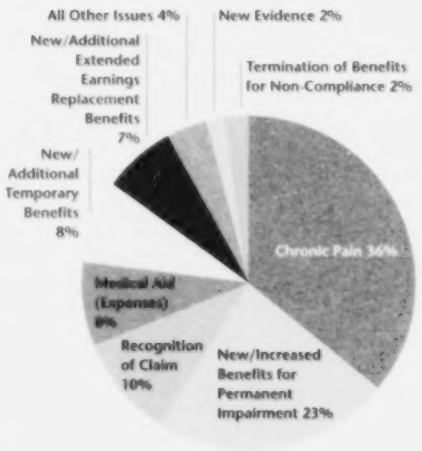
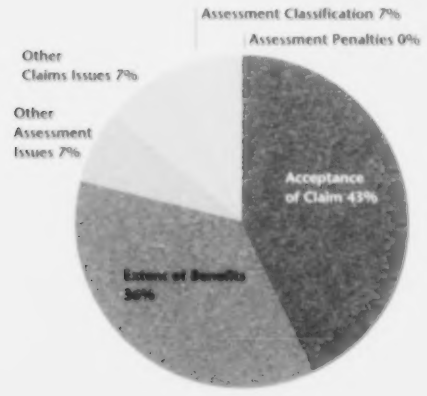

All Other Issues 4%
New Evidence 2%
New/Additional Extended Earnings Replacement Benefits 7%
Termination of Benefits for Non-Compliance 2%
New/ Additional Temporary Benefits 8%
Chronic Pain 36%
Medical Aid (Expenses) 8%
Recognition of Claim 10%
New/Increased Benefits for Permanent Impairment 23%

Figure 10
Decisions by Issue Categories – Employer



Noteworthy Decisions (by issue)

EERB Reviews (36 and 24 months)

Pursuant to the act, the board reviews workers' extended earnings-replacement benefits ["EERB"] first in the 36th month following the initial award, and then 24 months later. In *Decision 2006-002-AD* (April 23, 2007), the worker's earnings increased between the time of his 36 month review and his 24 month review; accordingly, his EERB was reduced. The worker appealed, arguing that the board had no authority to conduct the 24 month review, given the language of Policy 3.4.2R1.

Policy 3.4.2R1 states that an EERB will be reviewed 24 months after the 36-month review if it is determined to be necessary at the time of the 36-month review. It states that, as a general guideline, an EERB will be reviewed a second time if the worker has not established a consistent earnings-pattern during the first 36 months, or if he has shown significant deterioration in his compensable condition.

The worker argued that he had a consistent earnings pattern and his condition was stable; consequently, no EERB review was necessary.

The tribunal found that the discretion for reviewing EERBs granted to the board pursuant to s. 73(2)(b) of the act was broad enough to sanction the review that had been performed at the 24 month mark, and was not restricted by Policy 3.4.2R1.

The tribunal reached the same conclusion on similar facts in *Decision 2007-152-AD* (April 30, 2007).

A different situation arose in *Decision 2006-1033-AD* (May 14, 2007). At the time of the 36-month review, the board included the worker's earnings as a member of an organization's board of directors. The tribunal found that this remuneration should not have been included as income for purposes of the worker's EERB calculation, noting that the worker's appointment was for a defined term and was not permanent. Furthermore, the evidence did not support a finding that the worker would be able to secure similar employment in the future.

GECA Stress

The Workers' Compensation Board is responsible for administering the Government Employees Compensation Act ["GECA"] on behalf of the federal government to compensate federal employees for workplace injuries.

The GECA definition of "accident" is broader than that contained in the act. It includes both stress resulting from a traumatic event and work-related stress that develops over time (gradual onset stress). Under the act, only stress resulting from a traumatic event is considered compensable.

In 2005, the board approved Policy 1.3.6 entitled "Compensability of Stress as an Injury Arising out of and in the Course of Employment - Government Employees Compensation Act (GECA)". It applies to all decisions made on or after July 25, 2005. With respect to claims for gradual onset stress, the policy provides that certain criteria must be met to establish entitlement to benefits. Additionally, the policy states that mental or physical conditions caused by labour relations issues are not compensable. Several tribunal decisions addressed GECA stress claims and Policy 1.3.6 in 2007.

Decision 2006-603-AD (April 10, 2007) was a GECA stress case in which the worker claimed both gradual onset and post-traumatic stress injuries had occurred. The tribunal applied an objective, rather than subjective, test and concluded that no stress injury had occurred. The issues surrounding the worker's stopping work were essentially labour relations matters and not properly workers' compensation matters. The tribunal's decision (and in particular, the use of the objective test to determine if a stress injury has occurred) was upheld by the Nova Scotia Court of Appeal upon appeal.

Similarly, in *Decision 2007-555-AD* (March 25, 2008), the tribunal denied a worker's claim for recognition of stress injury under GECA where the factual situation giving rise to the claim was truly a labour relations matter. Under Policy 1.3.6, stress claims arising from labour relations issues are specifically excluded.

In *Decision 2006-958-AD* (April 10, 2007), a worker sought recognition of an injury in the nature of a stroke due to stress in the workplace. The tribunal found that the board's stress policy (Policy 1.3.6) was not applicable, as the injury was not a psychological injury. The tribunal concluded that the medical evidence was insufficient to establish a link between stress and the worker's stroke.

In *Decision 2006-617-AD* (October 17, 2007), the worker sought recognition for a stress injury under s. 4(1) of GECA. In denying the claim, the tribunal applied Policy 1.3.6, noting that it mirrored existing principles of common law. The tribunal found that the requirement in Policy 1.3.6 that a stressor be unusual or excessive was not a change from the common law, and therefore was not invalidated by s. 183(6A) of the act. For similar reasons, the tribunal also found that the policy was not in conflict with GECA, noting that workers' compensation legislation should be interpreted broadly.

Decision 2006-311-AD (March 13, 2008) dealt with a GECA stress claim for gradual onset stress six years after the worker developed psychological symptoms, and nine years after the exposure to the final, unusual, workplace stressor. At issue was whether the claim was time barred by s. 83 of the act, which requires that a claim be filed within five years of the happening of the accident or the date when a worker learns that he suffers from an occupational disease.

The tribunal rejected the worker's argument that post-traumatic stress disorder ["PTSD"] and depression were industrial or occupational diseases of the mining industry, for which the time limitation would only start when a worker became aware of his occupational disease. The tribunal interpreted the term "occupational diseases" as generally being diseases where causation can be inferred merely by duration of occupational exposure without evidence of a specific accident or accident process. PTSD and depression lacked these characteristics for coal miners. The tribunal denied the worker's claim, as more than five years had elapsed since the accident had occurred.

Recognition (arising out of and in the course of employment)

a) Exposure to toxins
In *Decision 2007-26-AD* (June 29, 2007), the tribunal recognized that a worker's symptoms were the result of his exposure to toxins at a sewage treatment plant.

b) Heart attack
Decision 2007-400-AD (Sept 28, 2007) considered whether a worker's heart attack (which occurred at work) was compensable. The tribunal noted the presumption in s. 10(4) of the act which provides that, where an injury occurs in the course of employment, there is a rebuttable presumption that the injury arose out of the employment, unless the contrary is shown. Although the worker had undiagnosed heart disease, the tribunal found that the presumption in s. 10(4) had not been rebutted, and the worker's heart attack occurred, at least in part, due to work. Consequently, benefits were payable under s. 10(5), as work caused the heart attack, but not the underlying condition.

c) Stroke
Similarly, in *Decision 2007-652-AD* (October 26, 2007), the tribunal found that a worker who suffered a stroke while in the course of his employment was entitled to benefits.

d) Wilful misconduct
In *Decision 2007-659-AD* (February 18, 2008), the tribunal addressed the issue of what constitutes "serious and wilful" misconduct in s. 10(3). This section denies compensation where an accident that otherwise would be accepted under 10(1) results from serious and wilful misconduct (unless a serious permanent impairment or death occurs). The worker in this case was injured when, while riding on the trunk of a car, he fell from the moving vehicle.

The tribunal found that the worker's conduct, while exhibiting poor judgement, did not amount to engaging in horseplay (which would have been excluded). Consequently, his conduct fell inside the no-fault scheme for compensation under the act. The worker's young age and lack of experience were relevant factors in this finding.

Causation

Several decisions addressed claims involving secondary medical conditions that were alleged to be related to the initial compensable injury.

In *Decision 2006-897-AD* (April 23, 2007), a worker requested medical aid in the form of hypertension and cholesterol medication. The worker had gained weight in the years following his injury and subsequently developed high blood pressure, high cholesterol, and diabetes. His family doctor filed a detailed report suggesting a possible link between the worker's inactivity and the development of these conditions. The tribunal found that the link to establish causation was too remote and denied the appeal.

Similarly, in *Decision 2007-53-AD* (November 8, 2007), the tribunal found insufficient evidence to establish a causal link between the worker's compensable injury and his subsequent development of hypertension.

In *Decision 2006-1027-AD* (June 14, 2007), a worker sought medical aid for methadone due to narcotic drug addiction. The drug addiction was alleged to have arisen as a result of a compensable shoulder injury. In denying the appeal, the tribunal noted that the narcotic at the centre of the addiction had never been prescribed to the worker, and that methadone was not an appropriate drug for shoulder pain. The worker's drug addiction was not causally related to his compensable injury.

A different situation arose in *Decision 2007-439-AD* (August 23, 2007), where the worker had been prescribed a narcotic for back pain arising from a compensable injury. The worker was subsequently recommended for participation in a rehabilitation program. A prerequisite for participation in the program was narcotic detoxification. The worker was referred for detoxification. After a several month period during which the board received no updates from the worker's physician, the board directed that the worker enter the rehabilitation program. As the worker had not yet been detoxified, he was not admitted into the program. His benefits were suspended. The tribunal reinstated the worker's benefits, noting that his addiction was due to treatment relating to his compensable injury.

Decision 2007-134-AD (November 9, 2007) dealt with a claim for survivor benefits. The tribunal accepted evidence that the worker had developed alcoholism as a result of his compensable injuries. The evidence established that the worker's alcoholism had materially contributed to his death. Consequently, survivor benefits were payable to the worker's widow. This decision is on appeal to the Nova Scotia Court of Appeal.

In *Decision 2007-562-AD* (January 4, 2008), the tribunal found that the worker's use of Prednisone (prescribed for his compensable injury) had resulted in the development of osteoporosis.

In *Decision 2007-228-AD* (March 31, 2008), the worker sought recognition that he had suffered a compensable neck and shoulder injury. Despite the fact that the worker experienced symptoms at work, the tribunal found that his symptoms did not arise from work; rather, they were attributable to a personal condition (scoliosis) that led to a faulty posture which, in turn, contributed to his symptoms in the workplace.

Chronic Pain

Chronic pain is an issue that continued to generate many decisions in 2007–08.

In *Decision 2006-656-AD* (May 24, 2007), the tribunal interpreted the phrase "like or related condition" (contained in the statutory definition of chronic pain) to mean pain syndromes that do not have significant identifiable organ dysfunction to explain the pain. This excludes conditions such as osteoarthritis, which has a definable tissue pathology.

In *Decision 2007-266-AD* (July 23, 2007), the tribunal found that, where there had been a previous final decision on an issue, consideration of entitlement to chronic pain benefits did not automatically open up a review of all benefits to which a worker may be entitled. The new evidence policy (Policy 8.1.7R1) continues to apply, and evidence that meets the new evidence criteria must be submitted to warrant reconsideration.

In *Decision 2007-415-AD* (November 19, 2007), the tribunal found that a pain-related impairment ["PRI"] award was payable during the time periods that the worker had been receiving an amended interim earnings-loss award. The tribunal noted that a PRI award was not the same as a retroactive permanent medical impairment ["PMI"] award, and that the Chronic Pain Regulations were its own code for chronic pain awards where they differed from the general scheme of the act.

In *Decision 2007-451-AD* (Oct 19, 2007), the tribunal clarified why an isolated reference to chronic pain syndrome is insufficient to establish chronic pain. The tribunal noted that "chronic pain syndrome" was not an official medical diagnosis, and that doctors do not use the term in a consistent manner. The term is commonly used to describe a person who is markedly impaired by pain with a psychological overlay. In this case, although the worker was diagnosed with chronic pain syndrome, the medical evidence suggested that the worker's pain was expected to continue after his injury. This meant that the worker's pain had not persisted beyond a normal recovery time. There was also no evidence to suggest that the worker's pain was disproportionate or excessive.

Decision 2007-426-AD (December 7, 2007) addressed the issue of a gap in medical treatment in the context of a chronic pain claim. The tribunal noted that, although the Chronic Pain Regulations do not require a worker to have sought ongoing medical treatment for pain, a failure to seek ongoing treatment can give rise to the inference that the pain resolved. In such cases, it is necessary to assess all evidence, including testimony, to determine whether it is as likely as not that the symptoms continued despite no ongoing medical treatment for pain.

In *Decision 2007-940-AD* (February 27, 2008), the tribunal addressed the issue of whether phantom limb pain could be compensable in the context of chronic pain. The tribunal rejected an argument that phantom limb pain was a like or related condition to a chronic pain syndrome or myofascial pain syndrome, noting that those pain syndromes were not associated with any definable tissue pathology or well-accepted biological abnormality. While phantom limb pain does not occur with every amputation, it is a well-accepted sympathetic nerve problem that is not rare. Although denying this appeal, the tribunal acknowledged that phantom limb pain could constitute chronic pain in other circumstances.

Apportionment

Decision 2007-107-AD (May 31, 2007) considered the board's apportionment policy (Policy 3.9.11R) in the context of the apportionment of a worker's PMI rating for hearing loss. The tribunal overturned the board's decision to reduce a worker's PMI rating to reflect a period of time that he had worked outside of Nova Scotia, noting the paucity of facts concerning the worker's exposure to noise during that period. The tribunal found that the situation was manifestly not one where it was "very obvious" based on "clear evidence" that the worker's employment activities outside of Nova Scotia contributed to the development of occupational noise-induced hearing loss or tinnitus. Consequently, there was no factual basis to justify apportioning the worker's PMI rating.

Procedural Matters

In *Decision 2007-228-PAD* (May 31, 2007), the tribunal considered its jurisdiction to reconsider a determination regarding a request for an extension of time to appeal. The tribunal found that the denial of an extension of time to appeal was an exercise of the tribunal's authority under s. 240(2) to extend any time limit prescribed by Part II of the act. To that extent, it was not a final decision in the context of the tribunal's power to confirm, vary, or reverse the decision of a hearing officer. Therefore, such a ruling did not attract the prohibition in s. 252(2).

New or Novel Issues

a) Second-hand smoke

Decision 2007-133-AD (June 8, 2007) was the tribunal's first decision addressing a worker's exposure to second-hand smoke. The worker, a former smoker who developed chronic obstructive pulmonary disease ["COPD"], attributed his COPD to his exposure to second-hand smoke in the workplace. The tribunal found that the worker's exposure to second-hand smoke was of too low an intensity to be a material contributing factor in the development of his COPD.

b) Ambulance fees

Decision 2006-822-AD (June 29, 2007) confirmed that ambulance fees incurred by a firm to transport a worker to the hospital constituted a form of "medical aid," and that the board could charge the fee to the firm's account and collect that fee as an assessment pursuant to s. 107 of the act.

c) Second opinions regarding medical conditions

In *Decision 2006-1015-AD* (June 22, 2007), the worker sought a finding that the board had improperly suspended his benefits pursuant to s. 84, due to his decision to seek a second opinion regarding surgery. The worker's cardiologist for the past two years had cleared him for arthroscopic surgery, but the worker wanted a second opinion. This delayed his surgery. The tribunal found that it was unnecessary for the worker to obtain a second opinion where clearance from his treating cardiologist had been obtained, and there was no indication that the worker was experiencing any other cardiac symptoms. The worker's decision to obtain a second opinion was a personal decision that was not the responsibility of the board.

Calculation of a Worker's TERB

Decision 2007-242-AD (September 11, 2007) involved a case where a 62-year-old worker suffered an injury and received TERB for two years. She then returned to the workforce for about five weeks, but found it too difficult to continue working. The then 64-year-old worker was paid additional TERB from August 1, 2005, to October 23, 2006, when she turned 65 years of age (as per s. 37). The worker's representative argued that the loss of earnings on August 1, 2005, was "the commencement of the worker's loss of earnings" triggering a possible two years of ERB under s. 37(10) going beyond age 65. The tribunal dismissed the appeal, finding the "commencement" to be the initial earnings-loss in 2003. This decision was overturned by the Nova Scotia Court of Appeal.

Section 29

Decision 2007-312-TPA (October 26, 2007) involved a workplace slip and fall injury where the worker filed a claim with the board but later sued the cleaning company responsible for the freshly mopped floor on which the worker slipped. Despite the fact that there was no employment relationship between the cleaning company and the worker, both were covered under the act. Consequently, the bar to action applied.

In *Decision 2007-421-TPA* (November 16, 2007), a section 29 application was brought by Universal, a covered employer under Part I of the act, and Village Centre, a non-covered employer and property holding company for a strip mall. Universal performed property management services for many different properties, had a number of employees, was co-landlord on leases, and was co-insured on a general liability insurance policy. Village Centre owned the property and used Universal for day-to-day management of the property, but used another entity for marketing. The respondent was employed by Buster's, a restaurant and lounge in Village Centre's strip mall. Ms. Doyle slipped and fell close to the entryway to Buster's on a common area sidewalk due, at least in part, to falling debris from the building. Ms. Doyle sued only Village Centre based upon an occupier liability claim. The applicants argued that suit should be barred against Village Centre (in addition to Universal) because the former was an "alter ego" of the latter. In the alternative, Village Centre argued that it should be entitled to a determination, pursuant to s. 33 of the act, that its liability was limited to the portion of damage or loss caused by its fault or negligence.

The criteria for corporate alter ego was considered. The tribunal found that while suit against Universal is statute barred by s. 28, suit against Village Centre is not statute barred. Village Centre is not a covered employer, nor is it an alter ego of Universal. The two companies had different directors and corporate operations, and Universal did not make all decisions concerning the Village Centre property. The listing as co-landlords and co-insured parties may have been for business convenience, risk management, and minimizing costs, but does not necessarily indicate control of one by the other. The tribunal further found that s. 33(2) does not confer jurisdiction upon the tribunal to apportion damage or loss. It is left to the courts to perform this function.

Vocational Rehabilitation

Decision 2007-515-AD (October 31, 2007) concerned the provision of vocational rehabilitation in the form of a second (i.e., graduate) university degree. The board had provided the worker with three years of university, and the worker wanted further financial assistance to obtain a graduate-level program. The tribunal considered Policies 4.1.2, 4.1.3, 4.2.3 and 4.2.4R3 and concluded that the worker was not entitled to VR in the form of a graduate degree.

Payment of an Attendant Allowance

Decision 2007-452-AD (November 13, 2007) considered the issue as to whom an attendant allowance should be paid. The tribunal found that it was reasonable to pay the attendant allowance directly to the worker and not to a third-party caregiver.

In *Decision 2007-646-AD* (January 31, 2008), the tribunal allowed a retroactive attendant allowance by a surviving daughter of the deceased worker, where the evidence established that daughter's care activities fell within Policy 2.1.6. These benefits were payable in addition to the retroactive PIB/EERB for chronic pain paid after the worker's death.

Medical Aid

In *Decision 2007-487-AD* (December 17, 2007), the tribunal confirmed that medical aid assistance in the form of massage therapy would only be covered when administered by an approved service provider as a treatment modality of physiotherapy or chiropractic treatment. The tribunal noted an exception to this rule (where someone else who was an approved service provider was monitoring the massage therapy), but denied coverage in this case because there was no approved service provider monitoring the worker's treatment.

Similarly, in *Decision 2007-930-AD* (March 11, 2008), the tribunal denied coverage of a worker's medical aid treatment from a physician who was not on the list of board-approved service providers.

PMI Assessments

In *Decision 2007-633-AD* (February 29, 2008), the tribunal confirmed that a directive by it that a PMI assessment be conducted does not mean that a physical examination of the worker must be made; rather, the board may perform the PMI assessment by way of a review of the worker's file.

Suitable and Reasonably Available Employment

At issue in *Decision 2007-658-AD* (February 11, 2008) was whether employment as a security guard was suitable and reasonably available for the worker, who had chronic pain. The tribunal found that where the worker could not participate in a job search due to his poor physical condition, this type of employment could not be considered reasonably suitable or available for the worker.

In *Decision 2006-676-AD* (July 30, 2007), the tribunal found that when determining a worker's EERB, it was not appropriate for the board to deem a generic "minimum wage occupation" to constitute suitable and reasonably available employment. The board was directed to re-evaluate the worker's entitlement to an EERB based on a specific, identified occupation.

Appeals from Tribunal Decisions

A participant who disagrees with a tribunal decision can ask the Nova Scotia Court of Appeal to hear an appeal of the decision. This is a two-step process.

First, the person wanting to bring the appeal must ask the court's permission to bring the appeal. This is called bringing an application for leave to appeal.

Generally, if the court is not convinced that the proposed appeal raises a fairly arguable issue, it will deny the person leave to appeal, without providing reasons. If leave to appeal is denied, there is no second step and the tribunal's decision is confirmed. Almost half of all appeals are denied leave to appeal.

Second, if the court believes the appeal raises a fairly arguable issue, it will hear the appeal and provide a written decision that will confirm, vary, or overturn the tribunal's decision.

During this fiscal year, 23 appeals from tribunal decisions were filed with the Court of Appeal:

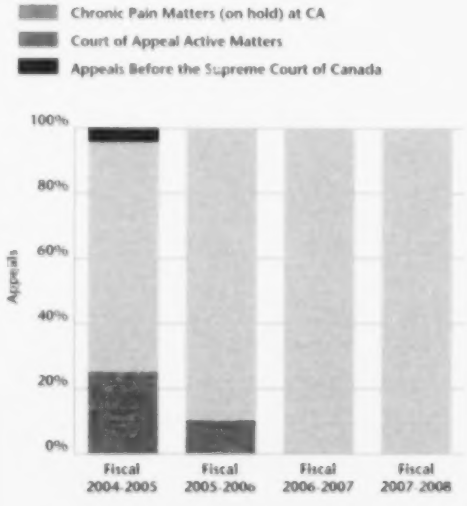
- 16 decisions were appealed by workers
- 4 decisions were appealed by employers concerning compensation provided to a worker
- 2 decisions were appealed by employers concerning their assessment
- 1 decision was appealed by the board, but later withdrawn

During this fiscal year, 20 appeals were resolved as follows:

- 7 appeals were either withdrawn by the person who had asked the Court of Appeal for leave to appeal or dismissed by the court for procedural reasons
- 7 appeals were dismissed by the Court of Appeal at the leave stage
- 4 appeals were decided by the Court of Appeal – 1 was allowed in part and 3 were denied
- 2 appeals were resolved by a consent order directing a rehearing

At the beginning of this fiscal year, there were 15 active appeals before the Court of Appeal. At the end of this fiscal year, there remained 18 active appeals (see Figure 11).

Figure 11
Appeals Before the Courts



Decisions of the Court of Appeal

The court decided four appeals and one stated case during this fiscal year.

1. Chronic Pain – validity of regulations, effective date

Martell v. Nova Scotia (Workers' Compensation Appeals Tribunal) (2007), 259 N.S.R. (2d) 192

The Court considered whether chronic pain had to be compensated at the same rate and under the same conditions as most compensable injuries under the act. Mr. Martell had challenged the Chronic Pain Regulations as being invalid due to a difference in the criterion for an extended earnings-replacement benefit contained in the regulations.

The court upheld the tribunal determining eligibility for an extended earnings-replacement benefit applying the rules in the Chronic Pain Regulations.

The court found that an extended earnings-replacement benefit for chronic pain could only be paid if the criteria under the Chronic Pain Regulations were met. It found that the act allowed the board to distinguish between different types of occupational disease in rates and types of compensation through regulation. The court stated:

> The Chronic Pain Regulations set out eligibility for benefits and services if a worker has chronic pain as defined, that was causally connected to a compensable injury. This separate scheme for chronic pain, including compensation, is expressly authorized by s-s. 10(7) of the Act. Accordingly there is no conflict between the Chronic Pain Regulations and the Act.

However, the court found that the tribunal erred in using the date of a medical report as the date chronic pain first occurred. The court found that there was nothing in the report that suggests that the initial onset of chronic pain occurred on the date the report was written.

Due to this error, the appeal was allowed in part. The matter was remitted to the board to determine the correct effective date of the chronic pain award.

2. Assessed employer – aboriginal world view

Mime'j Seafoods Ltd. v. Nova Scotia (Workers' Compensation Appeals Tribunal) (2007), 260 N.S.R. (2d) 127

The court confirmed the tribunal's finding that this holder of an aboriginal fishing licence was an employer under the act. The court found that this employer must pay workers' compensation assessments for their workers.

The decision contains an interesting discussion of the aboriginal communities' view of fishing as a communal activity based on sharing, instead of being an industry. However, as Mime'j Seafoods Ltd. clearly fit the statutory criteria for an "employer" under the act, the aboriginal world view did not override the statutory language.

3. Fortuitous or chance event – compensable

Canada Post Corp. v. Nova Scotia (Workers' Compensation Appeals Tribunal), [2007] N.S.J. 531

The court confirmed the tribunal's finding that a postal worker whose back "snapped" and seized up while sorting mail could fit the criteria for compensable accident due to a fortuitous or chance event.

4. Cap on living expenses paid during vocational rehabilitation

Guy v. Nova Scotia (Workers' Compensation Appeals Tribunal), [2008] N.S.J. No. 1

The court confirmed the tribunal's finding that the $750 monthly cap on living expenses paid by the board while a worker takes part in vocational rehabilitation must be applied.

The court found that while the allowance may be inadequate in some cases, it was not so inadequate to all workers in rehabilitation programs so as to be arbitrary. As the board's policy was not arbitrary, and was otherwise authorized, it was valid.

5. Stated Case – Chronic Pain first arising before April 17, 1985

Cohen v. Nova Scotia (Workers' Compensation Board) (2008), 260 N.S.R. (2d) 144

The Court of Appeal answered a "stated case" asked by the tribunal.

This was the first time that the tribunal had used its authority to state a case to the Court of Appeal. In other words, the tribunal asked the opinion of the court on a legal question to help it decide an appeal that raised a legal issue common to many other appeals.

April 17, 1985, is the date that the equality rights provision of the Canadian Charter of Rights and Freedoms came into force. The Chronic Pain Regulations provide that a worker can be assessed for chronic pain benefits where they "had" chronic pain on or after April 17, 1985.

The board issued policy 3.3.5 which provided that a worker can be assessed for chronic pain benefits where they first "developed" chronic pain on or after April 17, 1985. Under the board's policy, workers whose chronic pain first arose before April 17, 1985, could not be assessed for any chronic pain benefits.

At issue was whether the board's policy unlawfully removed the right of workers to be assessed for chronic pain benefits. The court stated that the policy was unlawful and that all workers could be assessed for their chronic pain after April 17, 1985.

The tribunal accepted the court's opinion.

Inter-agency Cooperation

Several standing inter-agency groups work together to improve service delivery:

Issues Resolution Working Group (IRWG)

Monthly meetings are held among the chief worker adviser, chief appeal commissioner, chief hearing officer as well as the manager of the TST Unit and the board's director of service excellence and client services to discuss issues arising from the adjudication of claims and for the processing of appeals within the appeals system in an effort to improve service delivery in these areas.

In particular, the IRWG has identified opportunities for process improvement and resolution of issues raised by representatives from the tribunal, internal appeals, the workers' advisers program, and adjudicators in the board's claims level. During 2007–08, the Issues Resolution Working Group met regularly to explore opportunities to improve decision making at all levels. All the system partners are committed to improving the system and responding to stakeholder concerns. These concerns were heard in the yearly stakeholder round table on November 28, 2007, at which time the agencies also reported on the system partner efforts to address stakeholder concerns. One of the main issues centres around efforts to make the system less adversarial. Partners continue to explore ways to resolve claims earlier and less formally.

The tribunal will focus its efforts in the coming year on this issue, exploring the use of resolution conferences and planning a forum amongst agencies and stakeholders on how to make the system less adversarial. This is in line with the WSIS strategic goal of improving service delivery in the field of issue resolution.

In the year ahead, the system partners have agreed that the Heads of Agencies Committee will keep stakeholders apprised of the efforts of the Issues Resolution Working Group and will specifically address means of tackling the performance measure represented by the percentage of decisions overturned on appeal in an effort to arrive at a method to monitor the improvements and quality of decision making within the system.

Appeal Issues Discussion Group

A sub-committee of representatives from the tribunal and the workers' advisers program, internal appeals, and client services department of the board meet as a group and have continued to work on the development of a training tool to help improve the consistency of adjudication throughout the system. The training tool covers everything from the application of the act to benefit of the doubt, responsibilities of the worker and employer, survivor benefits, and appealing a claim. It outlines the basic principles for adjudication under these headings and will be adapted as needed as a training tool for both adjudicators within the system and for outside participants.

System Performance Advisory Group

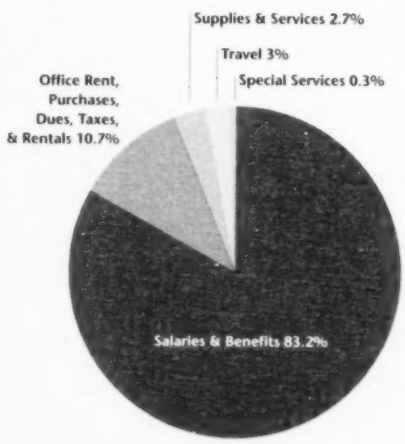
A group of stakeholder representatives (from employer, labour, and injured-worker groups) and representatives from the tribunal and other system agencies have continued to develop performance measures and targets for the WSIS as a whole. Some of these measures and targets, by their nature, relate to individual agency performance, notwithstanding their development to reflect system performance.

Partner agencies continue to work together to provide joint training to decision makers and others in the workers' compensation system.

Financial Report

In 2007–08, the tribunal's total expenditures were within 77 per cent of the original authority and within 96.26 per cent of our revised forecast. Net expenditures totalled $1,464,516.00, a reduction from the previous year (see Figure 12).

Figure 12
Budget Expenditures
(for the Fiscal Year Ending March 31, 2008)



The year ahead

The tribunal expects that the continued processing of chronic pain appeals will dominate the coming year's operations.

The tribunal, however, looks forward to encouraging change in the way that appeals are resolved.

Stakeholders have identified priorities for system partners including making the system less adversarial and improving effectiveness.

The tribunal will work with our partners and stakeholders to improve communication within the appeals system and to encourage a more collaborative approach to the resolution of appeals.

Key initiatives for 2008–09 will be to improve our appeal management processes to attain a higher level of efficiency, to improve communication with participants, and to take positive and specific measures to improve the resolution of appeals.

Appendix

Figure 1
Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 04-05	47	36	76	70	55	40	53	58	72	48	36	68	659
Fiscal 05-06	39	41	29	44	52	56	24	41	34	52	54	100	566
Fiscal 06-07	70	118	104	81	100	79	86	101	92	105	83	70	1089
Fiscal 07-08	72	82	59	105	64	65	116	118	100	85	57	53	976

Figure 2
Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 04-05	53	53	35	45	108	174	53	40	54	65	55	48	783
Fiscal 05-06	58	55	44	49	35	37	44	43	34	41	35	42	517
Fiscal 06-07	42	43	68	57	54	74	80	85	60	89	88	75	815
Fiscal 07-08	82	90	74	76	72	81	75	69	44	87	79	63	892

Figure 3
Appeals Outstanding at Year End

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Fiscal 04-05	479	460	491	510	453	317	309	325	341	319	292	302
Fiscal 05-06	267	245	226	215	227	240	213	209	203	208	223	275
Fiscal 06-07	298	368	401	418	458	460	459	468	497	507	497	483
Fiscal 07-08	469	453	428	452	438	416	451	493	543	535	503	481

Figure 4
Decisions by Appellant Type

	Total
Worker Claim Appeals*	875
Employer Claim Appeals	13
Employer Assessment Appeals	2
Section 29 Applications	2
Total	892

** Employer participation in worker appeals 27%.*

Figure 5
Decisions by Outcome

Allowed	201
Allowed in Part	147
Denied	428
S29	2
RTH	113
Moot	1
Preliminary Decisions*	3
Correcting Decisions*	9
Total Final Decisions	892

** Does not reduce the number of appeals outstanding.*

Figure 6
Decisions by Representation

Self-Represented	269
Workers' Advisers Program	425
Injured Workers Groups, Outside Counsel & Others	198

Figure 7
Timeliness to Decision (cumulative percentage by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
Fiscal 04-05	1.02	4.19	14.61	30.11	43.58	53.37	60.61	65.06	70.01	74.71	80.18	100
Fiscal 05-06	0.21	9.19	25.52	47.22	58.43	73.33	82.69	87.22	89.25	91.55	93.29	100
Fiscal 06-07	1.84	11.04	35.46	56.32	70.67	81.10	87.85	91.29	93.62	95.46	96.44	100
Fiscal 07-08	0.22	4.14	16.91	39.08	57.45	70.10	80.29	84.99	88.58	90.59	93.84	100

Figure 8
Decisions by Mode of Hearing

	Oral Hearing	Written Submission	Total
Fiscal 04-05	308	475	783
Fiscal 05-06	287	230	517
Fiscal 06-07	561	254	815
Fiscal 07-08	586	306	892

Figure 9
Decisions by Issue Categories – Worker

Recognition of Claim	123
New/Additional Temporary Benefits	97
New/Increased Benefits for Permanent Impairment	286
Medical Aid (Expenses)	104
New/Additional Extended Earnings Replacement Benefits	88
New Evidence	29
Chronic Pain	448
Termination of Benefits for Non-Compliance	23
All other issues	51
Total	1249

Figure 10
Decisions by Issue Categories – Employer

Acceptance of Claim	6
Extent of Benefits	5
Assessment Classification	1
Assessment Penalties	0
Other Claims Issues	1
Other Assessment Issues	1
Total	14

Figure 11
Appeals Before the Courts

	Chronic Pain Matters (on hold) at CA	Court of Appeal Active Matters	Appeals Before the Supreme Court of Canada	Total
Fiscal 04-05	6	17	1	24
Fiscal 05-06	1	9	0	10
Fiscal 06-07	0	15	0	15
Fiscal 07-08	0	18	0	18

Figure 12
Budget Expenditures
(for the Fiscal Year Ending March 31, 2008)

	Authority	Final Forecast	Actual Expenditures
Salaries & Benefits	$1,496,700.00	$1,267,000.00	$1,247,212.00
Travel	$57,000.00	$57,000.00	$41,234.00
Special Services	$85,000.00	$10,000.00	$3,516.00
Supplies & Services	$63,000.00	$47,000.00	$42,051.00
Office Rent, Purchases, Dues, Taxes & Rentals	$206,500.00	$191,400.00	$181,624.00
Sub Total	**$1,908,200.00**	**$1,572,400.00**	**$1,515,637.00**
Less Recoveries	$0.00	$51,100.00	$51,121.00
Totals	**$1,908,200.00**	**$1,521,300.00**	**$1,464,516.00**